

This letter discusses the various tax liabilities of fund raising organizations and their suppliers. See 86 Ill. Adm. Code 130.2005. (This is a GIL.)

November 30, 2004

Dear Xxxxx:

This letter is in response to your letter dated August 31, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

On behalf of our client, we are submitting this request for a private letter ruling concerning the application of the Retailer's Occupation Tax ('ROT') to particular transactions.

Statement of Fact

CLIENT, located in CITY, Illinois, sells food items and tangible personal property at wholesale for the purpose of fund-raising to elementary and secondary schools, including public, private non-profit, and private for-profit; teacher-sponsored student organizations (as referred to in Adm. Code Section 130.2006) such as student councils, student clubs, and choral and band groups; parent-teacher associations affiliated with the state or national PTA; other entities consisting of volunteers including parents and teachers, such as PTOs; Boy or Girl Scout troops sponsored by public or non-profit schools; and exclusively charitable, religious, or educational organizations. (Hereafter, CLIENT's customers are referred to as fund-raising organizations.) In addition, CLIENT makes a limited number of retail sales, although this may increase. CLIENT is a registered retailer under the Illinois Retailers' Occupation Tax provisions. This letter ruling request relates solely to CLIENT's activities as a wholesaler to fund-raising organizations.

CLIENT is a for-profit business and sells candy bars, magazine subscriptions, frozen pizzas, cookie dough, candles, gift wraps, lotions and shower gels, seasonal gifts, and other like items of tangible personal property at wholesale to fund-raising organizations who then sell the items at events or campaigns for charitable purposes. CLIENT, as a wholesaler, does not sell any products directly to end users. The fund-raising organizations sell the items at a mark-up to individual end consumers with the net proceeds going to the fund-raising organization or its beneficiaries. CLIENT's products are consumable products which could be purchased elsewhere and the dominant motive for the purchase of these items is the making of a donation rather than the acquisition of the property. In addition, the products are priced non-competitively as compared to traditional retailers, at the suggested retail prices in the sale catalogs, with the understanding by the end consumer that the additional proceeds are for the benefit of the fund-raising organization or its beneficiary. The transfer of tangible personal property is merely incidental and secondary to the dominant purpose of making a charitable donation to the fund-raising organization or its beneficiary. The character of the fundraising event is such that it has no real practical, punitive effect on competition.

The fund-raising organizations operate 'exclusively' for educational or charitable purposes. The purpose of the sales of CLIENT products by these organizations is not to generate a profit but rather to raise funds for the fund-raising organizations or their beneficiaries. The proceeds of the sales go towards the furtherance of their goals. In addition, the persons executing these sales for the fund-raising organizations to the end consumers are doing so on a volunteer basis and are not professional salespeople or retailers.

Description of the Order Process

CLIENT's order process starts with its sales consultants, who are all employees of CLIENT, presenting their various products and fund-raising programs to fund-raising organizations and assisting them in planning fund-raising events. The sales consultants work only with the fund-raising organization in planning the fundraiser and choosing the appropriate program, and their role is only one of planning and acting as a liaison between the fund-raising organizations and CLIENT. CLIENT is making the sale to the fund-raising organization, not the end consumers and CLIENT's vendor relationship is with the fund-raising organizations.

The fund-raising organizations place one bulk order with CLIENT. When the items are shipped, CLIENT invoices the fund-raising organization with one itemized invoice for the wholesale price of the products. The fund-raising organization pays CLIENT in one lump payment for the wholesale price of the products ordered for the specific fund-raising event or campaign.

Orders are shipped in one bulk shipment to the fund-raising organization's address. The fund-raising organization either distributes the items to the volunteer salespeople, who then deliver the orders to the end consumers, or conduct a sale of the products ordered.

Issues:

Please address the following questions related to the fact pattern described above:

1. In cases where the fund-raising organization is not registered with Illinois to collect ROT, as a for-profit wholesaler making sales to exclusively educational

and charitable organizations, is CLIENT exempt from the collection of the ROT once it has obtained an Illinois-issued 'E' identification number and an appropriate exemption certificate from the fund-raising organization?

2. Does CLIENT have any obligation to monitor the number of events held by a fund-raising organization to determine if it should obtain a resale certificate rather than an exemption certificate from these organizations? It is unreasonable to assume that one supplier would have knowledge of all of the activities conducted by its customer.
3. If the organization is not registered and cannot issue appropriate documentation to exempt their purchase, is the tax base on which CLIENT is required to collect tax from the organization the wholesale (invoice) price? Does this alleviate the fund-raising organization's obligation to collect or remit any additional tax? This is the traditional requirement when a wholesaler does not receive exemption documentation.
4. In cases where the fund-raising organization is not registered with Illinois to collect ROT, but ROT applies on the sales to the end user, does CLIENT have the option, if requested by the fund-raising organization, of remitting the sales tax directly to the State on behalf of the fund-raising organization? If so, on what taxable base, the wholesale (invoice) price or the retail (catalog) price? At which jurisdictional rates should tax be charged, CLIENT's location or the fund-raising organization's location? Is CLIENT or the fund-raising organization required to indicate that the selling price includes tax? It is impractical for the volunteer sales people, who are predominantly children, to calculate sales tax on each order.
5. Under what circumstances is a fund-raising organization required to register as a retailer and collect ROT on its sales?
6. In cases where the fund-raising organization is registered with Illinois to collect ROT, as a for-profit wholesaler making sales of tangible property to fund-raising organizations, is CLIENT exempt from the collection of the ROT once it has obtained an appropriate Illinois resale certificate from the fund-raising organization?
7. Adm. Code 130.2009 states that the exemption from ROT *'does not apply to situations in which the exempt organization purchases ready-made items from a supplier for the purpose of resale.'* Does this preclude CLIENT from accepting an 'E' certificate from fund-raising organizations holding a limited number of events per year since all of the items sold by CLIENT would be considered 'ready-made items'? This provision appears to indicate that a resale certificate is required to be issued by the fund-raising organization instead of an 'E' exemption certificate, and that the fund-raising organization is responsible for collecting and remitting tax on the sale of these items. Or, in the absence of a resale certificate does this provision indicate that CLIENT should collect tax on the wholesale price on its invoice to the fundraising organization?
8. When ROT applies on the transaction because the fund-raising organization is ineligible to issue exemption documentation to CLIENT, what is the taxable base for sales by CLIENT to the fund-raising organizations? In the examples below, the tangible personal item being sold is food with a tax rate of 1% in CITY.

Please indicate if the scenarios below are acceptable methods of calculating and collecting the tax and presenting it on the invoice.

- a) Price of item to end consumer is \$15. Tax is not included in the price to the end consumer. Because CLIENT has not received any exemption documentation, it is collecting and remitting the tax on its selling price. It would bill the fund-raising organization a total of \$7.58; the wholesale price of \$7.50 plus \$.08 or 1% on the price it charged its customer, which it would remit to the DOR. The fund-raising entity would retain \$7.42. This is what would be required of any other wholesaler who does not receive an exemption or resale certificate from the customer.
 - b) Price of the item to end consumer is \$15. Tax is included in the price, with a statement that tax is included in the sale brochure. CLIENT bills the fund-raising organization for \$7.58 for the wholesale price of \$7.50, plus \$.08 or 1% on the wholesale price. The fund-raising entity would retain \$7.42 and CLIENT would remit the tax to the DOR. No additional tax is due by the fund-raising organization on the balance as the excess amount is considered a charitable contribution.
 - c) Price of item to end consumer is \$15. Tax is included in the price, with a statement that tax is included in the sale brochure. CLIENT bills the fund-raising organization for \$7.65 which would include the \$7.50 wholesale price of the item plus \$.15 for 1% sales tax on \$14.85 to be remitted to the DOR, with \$7.35 retained by the fund-raising entity. This method would only be used if tax collection is requested by the fund-raising organization.
9. Do the rules differ depending on the type of organization or will the determinations in this letter apply to all fund-raising organizations, such as elementary and secondary schools, including public, private non-profit, and private for-profit; teacher-sponsored student organizations, as referred to in Adm. Code Section 130.2006, such as student councils, student clubs, and choral and band groups; parent-teacher associations affiliated with the state or national PTA and other entities consisting of volunteers including parents and teachers, such as PTOs; Boy or Girl Scout troops sponsored by public or non-profit schools; and exclusively charitable, religious, or educational organizations? If the rules differ, please indicate to which organizations each rule applies and address the above questions for all different scenarios.

Discussion

Adm. Code 130.2005, paragraph (d)(1) explicitly states that suppliers of fund-raising organizations do not incur ROT when selling tangible personal property to fund-raising organizations for resale in any form as tangible personal property. Parent-Teacher organizations and educational organizations are also included in the list of examples of organizations exempt from ROT liability as stated in paragraphs (k)(1) and (a)(1)(D) of Adm. Code. 130.2005. In addition, Adm. Code 130.2006, specifies that teacher-sponsored student organizations affiliated with elementary or secondary schools are exempt from ROT on all sales of tangible personal property for fund-raising purposes and may acquire items for resale without payment of tax.

Paragraph (a)(1)(E) lists three situations which would exclude a fund-raising entity from the exemption from collecting ROT: 1) selling to its own members; 2) conducting sales that are competitive with other merchants; and 3) conducting continuous operations of retail sales. Adm. Code 130.2005 stipulates that in order to be considered 'Noncompetitive Sales' the fund-raising transactions must not be continuous and should either be held annually or 'a reasonably small number times within a year.' The test of reasonableness would be an administrative decision, to be made by the Department of Revenue. The events held by the fund-raising organizations who are CLIENT's customers qualify as being noncompetitive because the tangible items sold are priced higher than they would be at local retail outlets and because the fund-raising events are not the primary activity or focus of the fund-raising organizations, and most of the organizations hold a limited number of fundraisers per year. Two other conditions are listed in paragraph (q)(1) which would make fund-raising organizations liable for ROT: 1) the organization is operating as a 'business' enterprise, consuming or using the product purchased from the supplier and, 2) the organization is giving away the product purchased from the supplier. The fund-raising organizations purchasing items from CLIENT to resell for charitable and educational purposes do not meet either of these conditions.

Adm. Code 130.1401(b) eliminates the requirement to determine whether the purchaser is buying the property 'for use or consumption' or 'for resale' if the sale is made to any association or institution operated exclusively for charitable, religious or educational purposes or sales to a government body because receipts from such sales are exempted from the Act whether such sales are at retail or whether such sales are for resale.

In contrast to the above administrative provisions, Adm. Code 130.2009 states that the exemption from ROT does not apply to situations in which the exempt organization purchases ready-made items from a supplier for the purpose of resale. However, this limitation does not exist in any of the other provisions related to sales by charitable fund-raising organizations such as Adm. Code 130.2005 or 130.2006. Therefore, it is unclear when this exclusion applies.

Several other guidelines issued by the Department of Revenue also support our position that the fund-raising organizations and CLIENT as their supplier are exempt from collecting ROT as long as the fund-raising organizations have a limited number of fund-raising events per year. Private Letter Ruling ST 00-0020 of October, 2000 stated that an organization with an exemption identification number from the Department of Revenue may engage in a limited number of sales per year for fund-raising purposes without incurring ROT.

General Information Letter ST 04-0009 of January, 2004 also cites Adm. Code 130.2005 in addressing transactions between a wholesaler and an exempt organization for resale. In addition, ST 03-0201-GIL of December, 2003 states that Adm. Code 130.2005 applies provided the exempt organization holds no more than two sales per year. ST 02-0098-GIL of April, 2002 also indicates that organizations with 'E' numbers are allowed to purchase products and sell them at retail on a limited and noncompetitive basis without being subject to ROT.

Based on the above provisions, in cases where the fund-raising organizations hold fund-raising events more frequently throughout the year, we believe CLIENT is still the wholesaler and therefore exempt from collecting ROT, provided it obtains an 'E'

exemption certificate or resale certificate from the fund-raising organizations. For the convenience of the fund-raising organizations and their volunteer members, but only if explicitly requested by the fund-raising organization, CLIENT may choose to collect and remit the tax on the sales held by the fund-raising organizations directly to the DOR, as permitted by IL Adm. Code 130.550. CLIENT would be responsible for accounting for and paying the tax and the fund-raising organizations who hold more than a limited number of fund-raising events per year would be responsible for informing the end consumers that sales tax is included in the price of the tangible personal items being resold. If requested by the fund-raising organizations, CLIENT would include tax in the price as it would not be feasible to ask elementary and secondary school students to calculate, collect, and remit taxes back to CLIENT on their sales to friends and relatives.

In compliance with Reg. Section 1200.110(b)(6), we wish to obtain clarification of a statement of authority contrary to our position that the transactions between CLIENT and the fund-raising organizations are exempt from ROT. Adm. Code 130.2009 of January, 2000 states that the exemption from ROT *'does not apply to situations in which the exempt organization purchases ready-made items from a supplier for the purpose of resale.'*

We argue that Adm. Code 130.2009(2)(b) of January, 2000 directly contradicts Adm. Code 130.2005(d) and (q) which explicitly state that suppliers of nonprofit, exclusively charitable organizations, which fund-raising organizations qualify as, do not incur ROT when selling them tangible personal property for resale on a limited, noncompetitive basis. Furthermore, Adm. Code 130.2009 contradicts Adm. Code 130.2006 in stating that sales of ready-made items by fund-raising organizations composed of volunteers and recognized by school districts are taxable. In addition, Adm. Code 130.2009 imposes a tax collection requirement that contradicts Adm. Code 130.1401(b) which eliminates the requirement for the seller to determine the buyer's purpose. We would also argue that the Letter Rulings, Cases and General Information Letters issued since January, 2000, the effective date of Adm. Code 130.2009, have not addressed or enforced Adm. Code 130.2009(2)(b) but rather have reestablished the position of Adm. Code 130.2005 and Adm. Code 130.1401. ST 00-0243-GIL of October 31, 2000, which was from a company selling tangible personal property at wholesale prices to schools and other organizations for fund-raising, states that organizations with E numbers are allowed to engage in a very limited amount of retail selling without incurring ROT liability and refers to Adm. Code 130.2005(a)(2) through (a)(4). ST 04-0009-GIL of January 14, 2004, from a company which arranges fund-raising functions for school districts, also refers to Adm. Code 130.2005. ST 03-0201-GIL from December 12, 2003 also concerns a wholesaler selling tangible personal property to schools and other organizations for fund-raising purposes and the Department states that sales to these organizations are exempt from sales tax if the organizations hold a limited number of fund-raising events per year if they provide a valid E number, as stated in Adm. Code 130.2005, and are also exempt if organizations holding more than two fund-raising projects per year provide a Certificate of Resale. It appears that in all of these rulings, the wholesaler is selling 'ready-made' products but no reference is made to Adm. Code 130.2009(2)(b) which precludes the exemption. Therefore, we can only assume that the Department disagrees with the loss of exemption for ready-made items sold by fund-raising organizations in a charitable campaign.

Conclusion

Fund-raising organizations associated with elementary and secondary schools (public, private nonprofit, and private for-profit); teacher-sponsored student organizations (as referred to in Adm. Code 130.2006), such as student councils, student clubs, and choral and band groups, parent-teacher associations affiliated with the state or national PTA; other entities consisting of volunteers including parents and teachers, such as PTOs; Boy or Girl Scout troops sponsored by public or non-profit schools; and nonprofit charitable, religious, or educational organizations are exclusively charitable as described in Adm. Code 130.2005(a)(1)(d) and (l)(1). The fund-raising events they hold are noncompetitive, conducted on a voluntary basis by their members, occur a limited number of times per year, and all of the proceeds go to the fund-raising organizations. In addition, the fund-raising organizations do not use, consume, or give away the items purchased at wholesale prices from CLIENT, which would exclude them from the ROT exemption according to paragraph (q)(1). Given these facts, CLIENT's sales to the fund-raising organizations holding a limited number of fund-raisers per year, as monitored by the organizations themselves and not CLIENT, are exempt from ROT if the organization has provided an 'E' number to CLIENT.

For fund-raising organizations which frequently hold events; we acknowledge that the not for profit exemption from ROT would not apply to their fund raising sales. However, CLIENT is a supplier, selling products to the fund-raising organizations at wholesale prices. It is unreasonable to assume that one supplier would have knowledge of all the activities conducted by its customers. Exempt sales to these fund-raising organizations are still appropriate if a proper 'E' certificate or resale certificate is provided by the fund-raising organization.

When the fund-raising organization can not issue a valid exemption or resale certificate, CLIENT, if requested by the fund-raising organization, should have the option of remitting the tax directly to the DOR, for the convenience of its customers to assure an accurate tax calculation. Tax would be included in the price to the end consumer. It is impractical for the volunteer sales people who are not professional retailers but predominantly elementary and secondary school children to calculate, collect and remit tax on their sales. Because CLIENT would be collecting the tax from the fund-raising organizations, rather than from the end consumers, we feel the appropriate taxable base is the wholesale price paid by the fund-raising organizations to CLIENT and that the CITY tax rate (CLIENT's order acceptance location) is the appropriate rate to use.

We respectfully request that the Department issue a Private Letter Ruling clarifying that organizations with an 'E' number who comply with the guidelines enumerated in Adm. Code 130.2005 and engage in a limited number of noncompetitive fund-raising events or campaigns to non-members per year are exempt from ROT even when purchasing ready-made items from a supplier for the purpose of resale. In cases where the schools or school organizations conduct fund-raising activities more extensively throughout the year, we would argue that CLIENT is merely the supplier and is not liable for the collection of ROT if the fund-raising organizations provide an 'E' Certificate or Certificate of Resale. In addition, in any situation where CLIENT, at the request of the fund-raising organization, collects ROT to be remitted to the DOR, the price to the end consumer would include the tax, this stipulation would be indicated in the sales brochure, and the tax would be computed on the wholesale price as the taxable base using the CITY, Illinois tax rate (CLIENT's location).

To the best of our knowledge, the Department has not previously ruled on the same or similar issue for a taxpayer nor has the taxpayer ever previously submitted the same or

similar issue for consideration other than in the situations cited above which we have distinguished. We are not aware of any other supporting or contrary relevant authorities.

No audit or litigation is currently pending with the Department and our client. CLIENT respectfully requests that all references to it be omitted from any version of the Private Letter Ruling available to the public.

We thank you for your consideration and look forward to a favorable ruling. If you have any questions regarding this matter or require additional information in order to issue this ruling, please feel free to contact me.

DEPARTMENT'S RESPONSE:

The Department is unable to issue a private letter ruling on the matters raised in your request without examination of the specific documentation as to each transaction. Information required would necessarily include the brochures used, contracts between the parties, and invoices covering the specific transaction at issue. However, I hope the following information will be helpful in making a determination of the tax liabilities of your client.

Issue No. 1 -- Does a retailer incur Retailers' Occupation Tax when presented with a valid E-number?

A retailer does not incur Retailers' Occupation Tax liability if a purchaser presents a valid E-number issued by the Department. Organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See 86 Ill. Adm. Code 130.2007. This number evidences that this State recognizes that the organization qualifies as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of its organizational purpose.

Issue No. 2 -- Retailer's obligation to verify exemption.

Part (d) of Section 130.1405 quotes Section 2(c) of the Retailers' Occupation Tax Act, which provides that a failure to present an active registration number or resale number and a certification to the seller that a sale is for resale, creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are for resale, or that a particular sale is a sale for resale. Case law has determined that the acceptance of a Certificate of Resale with an invalid registration number will not relieve the seller of liability from Retailers' Occupation Tax, even if accepted by the seller in good faith. For a sale to qualify as exempt, because the item is sold to an exempt organization, the seller may not rely on an invalid exemption number, even if accepted in good faith. The burden of sustaining a right to a tax exemption is on the person (retailer) claiming that the purchase is tax exempt. See 130.2005(r)(3).

Issue No. 3 -- Tax base and obligation to collect tax.

A retailer making a retail sale to an organization without a valid exemption from Use Tax liability, must collect Use Tax from the organization on the gross receipts received, and remit Retailers' Occupation Tax to the Department on the gross receipts. An organization acting as a retailer in Illinois must register with the Department as a retailer and remit Retailers' Occupation Tax, as well as collect Use Tax on its retail sales. Although an organization may get credit for taxes paid to its supplier, Retailers' Occupation Tax and any applicable local occupation taxes are still incurred based on the gross receipts received from the retail sale. The Department recommends that the

organization register with the Department as a retailer and provide its supplier with a certificate of resale for its purchases. The obligation to collect and remit taxes would then be on the organization. Please note, it is recommended that in the case of public schools or school organizations which incur some Retailers' Occupation Tax liability so as to be required to register with the Department of Revenue, the Board of Education which governs the school district (rather than each individual school or school organization) should apply to the Department for a Certificate of Registration (IBT number), and such Board of Education should file a single return for the return period covering all the taxable school activities that occur under its jurisdiction. See 86 Ill. Adm. Code 130.2005(c).

A supplier may file returns for a retailer in certain situations. See 86 Ill. Adm. Code 130.550. For simplicity of administration, it is permissible for manufacturers, importers and wholesalers, whose products are sold at retail in Illinois by numerous retailers, *and who wish to assume responsibility for accounting and payment of all tax* accruing under the Act with respect to such sales, to file on behalf of its numerous retailers. Any retailer may select this arrangement with written notice to the Department. In general, this is allowed so long as the retailers who are affected do not make written objection to the Department to this arrangement, and provided that such arrangement in any given case is acceptable to the Department. Please note, if the Department accepts this arrangement, the supplier is financially responsible for filing and payment of all taxes.

Issue No. 4 – Supplier's option of collecting and remitting of tax for retailer; Situs of transaction.

For information regarding a supplier's option of collecting and remitting tax on behalf of a retailer, please see the above response in issue 3. If a purchase order is accepted in a jurisdiction that imposes a local tax, such as a Home Rule Municipal Occupation Tax, that local tax will be incurred, in addition to the State of Illinois Retailers' Occupation Tax. See 86 Ill. Adm. Code 270.115. A supplier that has entered into a Department approved agreement to be financially responsible for collecting and remitting taxes on behalf of a retailer would be required to document the transaction where the purchase order was accepted and collect and remit the applicable taxes.

A retailer's records must state tax separately from the selling price when a retailer is required or authorized to collect Use Tax and state such tax separately to the purchaser from the selling price of the tangible personal property which he or she is selling. This is the case, unless the Department finds that it is not possible, under the facts of the case, for the retailer to collect the tax from the purchaser as a separate item from the selling price. See 86 Ill. Adm. Code 150.1305(a). A retailer can prove compliance with these requirements by showing the tax separately on invoices or sales tickets that are issued to his or her customers, or, in a proper case, by publicly posting an appropriate sign. See 86 Ill. Adm. Code 150.1305(b).

If a retailer who is entitled to use the posted sign procedure wishes to comply with the requirements under this regulation, he or she may satisfy the separately stated requirement to the purchaser by publicly displaying a sign stating that all tangible personal property for which a given charge is made is being sold for a specified amount, with the Use Tax and home rule or other local Retailers' Occupation Tax being a specified amount based on the applicable tax collection schedule. See 86 Ill. Adm. Code 150.1310(a).

Issue No. 5 – Requirement to register and Retailers' Occupation Tax liability.

For information pertaining to when a fund raising organization is required to register please see 86 Ill. Adm. Code 130.2005(c). Retailers' Occupation Tax liability is incurred when a fund raising organization engages in selling tangible personal property at retail, except in three limited situations. See 86 Ill. Adm. Code 130.2005(a)(2), (a)(3) and (a)(4).

Issue No. 6 – Is a supplier exempt from Retailers' Occupation Tax liability upon receiving a certificate of resale?

Please see the Department's response to Issue No. 2.

Issue No. 7 – Application of 86 Ill. Adm. Code 130.2009.

Please note the exemption stated in 86 Ill. Adm. Code 130.2009 does not apply to situations in which the fundraising group purchases items that it will in turn sell from a supplier who sells the items to the fundraising group for the purpose of resale and profits from the sale to the fundraising group. See 86 Ill. Adm. Code 130.2009(b).

A fundraising group may engage in tax-free selling under Section 130.2009 only when it sells items that it has prepared or that are donated to it. Please see the examples listed in 86 Ill. Adm. Code 130.2009(c). This does not include complete, ready-to-sell items, such as greeting cards, wrapping paper, holiday ornaments, candy bars, and frozen pizzas, for resale from a supplier who profits from the sale to the fundraising group. See 86 Ill. Adm. Code 130.2005(b).

Issue No. 8 – Tax base

A supplier making retail sales to an organization that is unable to document an exemption from paying Use Tax on its purchases incurs Retailers' Occupation Tax liability on its gross receipts received from the sale to the organization. For example, in response to your first example (a), if the supplier invoices an organization \$7.50 for a retail sale, then Retailer's Occupation Tax liability, and local home rule occupation taxes, if any, would be incurred by the supplier on the \$7.50. The organization that then resells that item will incur Retailers' Occupation Tax and local home rule tax liability on its gross receipts from the sale, assuming no exemptions apply. It may claim a credit for taxes properly due and paid its supplier.

In the context of a general information letter, and without more specific information, we cannot address your other hypotheticals. Liability for any given transaction may vary depending upon specific factors, including, but not limited to, the identity of the retailer, the status of the retailer and seller, and the existence and use of any agency agreements per 86 Ill. Adm. Code 130.550, including any available exemptions which may apply.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk